

CR 02-938 DOC - 11/21/2006 - Sentencing Proceedings

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BARRY BYRON MILLS, TYLER DAVIS
BINGHAM, CHRISTOPHER OVERTON
GIBSON, and EDGAR WESLEY HEVLE,

Defendants.

No. CR 02-938 DOC

ORIGINAL
Debbie Gale, CSR 9472

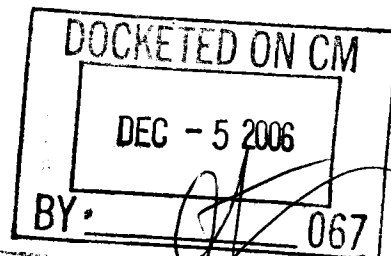
REPORTER'S TRANSCRIPT OF PROCEEDINGS

Sentencing Proceedings

Santa Ana, California

Tuesday, November 21, 2006

Debbie Gale, CSR 9472, RPR
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
(714) 558-8141



AB2006-11-21 Sentencings

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3 ALSO PRESENT:

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Harlan Penn
Bureau of Prisons

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6

Kathleen Brennan
U.S. Pretrial Officer

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SANTA ANA, CALIFORNIA, TUESDAY, NOVEMBER 21, 2006

Sentencings

(8:48 a.m.)

09:28:19 4 THE COURT: All right. We're on the record.
09:28:20 5 Mr. Mills is present, Mr. Steward and Mr. Fleming.
09:28:26 6 Good morning.
09:28:27 7 MR. STEWARD: Good morning.
09:28:27 8 DEFENDANT MILLS: Good morning.
09:28:27 9 MR. FLEMING: Good morning.
09:28:27 10 THE COURT: Mr. Bingham is present. Mr. White and
09:28:28 11 Mr. Harris are present. Good morning.
09:28:31 12 MR. HARRIS: Good morning.
09:28:31 13 DEFENDANT BINGHAM: Good morning.
09:28:31 14 MR. WHITE: Good morning.
09:28:32 15 THE COURT: Mr. Calabria, Mr. Hevle, and
09:28:34 16 Mr. Rosen, good morning.
09:28:36 17 MR. CALABRIA: Good morning.
09:28:36 18 DEFENDANT HEVLE: Good morning.
09:28:36 19 MR. ROSEN: Good morning.
09:28:36 20 THE COURT: Mr. Wolfe, good morning.
09:28:37 21 MR. WOLFE: Good morning.
09:28:38 22 THE COURT: Mr. Emmick, good morning.
09:28:41 23 MR. EMMICK: Good morning, Your Honor.
09:28:42 24 THE COURT: I understand Ms. Flynn cannot join us
09:28:43 25 today.

09:28:44 1 MR. WOLFE: That's correct.

09:28:44 2 THE COURT: She's proceeding on with the next
09:28:46 3 prosecution in the matter.

09:28:48 4 MR. WOLFE: Yes.

09:28:48 5 THE COURT: All right. Mr. Gibson is not present.
09:28:51 6 He's in Springfield. He'll be transported on November 30th.

09:28:55 7 Is there any legal reason or cause why the Court
09:28:58 8 should not proceed to sentencing on today's date, Mr.
09:29:01 9 Fleming and Mr. Steward?

09:29:02 10 MR. FLEMING: No, Your Honor.

09:29:03 11 MR. STEWARD: No, Your Honor.

09:29:03 12 THE COURT: The government, on behalf of
09:29:04 13 Mr. Mills, any legal reason or cause why the Court should
09:29:07 14 not proceed to sentence?

09:29:09 15 MR. WOLFE: No, Your Honor.

09:29:10 16 THE COURT: Mr. White and Mr. Harris, any legal
09:29:12 17 reason or cause why the Court should not proceed to sentence
09:29:15 18 on today's date?

09:29:16 19 MR. HARRIS: No, Your Honor.

09:29:17 20 MR. WHITE: No, Your Honor.

09:29:21 21 THE COURT: Okay. Mr. Calabria, Mr. Rosen, any
09:29:23 22 legal reason or cause why the Court should not proceed to
09:29:26 23 sentence on today's date?

09:29:27 24 MR. CALABRIA: No, Your Honor.

09:29:28 25 MR. ROSEN: No, Your Honor.

09:29:29 1 THE COURT: As to either Mr. Hevle or Mr. Bingham,
09:29:32 2 counsel, any legal reason or cause why the Court should not
09:29:37 3 proceed to sentence?

09:29:38 4 MR. WOLFE: No, Your Honor.

09:29:39 5 THE COURT: Okay. Mr. Steward or Mr. Fleming,
09:29:40 6 would you like to be heard in this matter?

09:29:43 7 MR. STEWARD: We'll submit.

09:29:44 8 THE COURT: The government?

09:29:46 9 MR. WOLFE: Your Honor, I don't wish to argue, but
09:29:47 10 I'd ask a couple of findings that I believe the Court ought
09:29:50 11 to make prior to sentencing.

09:29:53 12 THE COURT: Sure.

09:29:55 13 MR. WOLFE: For Mr. Mills and Bingham, as to the
09:29:58 14 counts that are not covered by the capital sentencing law --
09:30:01 15 that is Counts One, Two, and Nine -- I believe that the law
09:30:11 16 requires that Your Honor have a presentence report prepared,
09:30:14 17 unless the Court makes a finding that in the circumstances
09:30:20 18 of the case there's sufficient information in the record to
09:30:24 19 allow the Court to sentence without a presentence report.
09:30:28 20 The government believes that that's true as to these cases
09:30:31 21 because of the information in the record from the sentencing
09:30:37 22 phase of the trial.

09:30:38 23 But I believe that Your Honor -- if Your Honor
09:30:41 24 agrees, Your Honor ought to make the record that no
09:30:43 25 presentence report was required as to Mills or Bingham for

09:30:47 1 Counts One, Two, and Nine because the Court has sufficient
09:30:52 2 information in the record to sentence without a presentence
09:30:55 3 report.

09:30:56 4 THE COURT: All right. Thank you.

09:30:57 5 Any other finding?

09:31:00 6 MR. WOLFE: No, Your Honor.

09:31:01 7 And as to argument, the government will submit on
09:31:03 8 its papers.

09:31:09 9 THE COURT: Okay. I also believe that, in all
09:31:11 10 likelihood, the defendants are willing to waive this
09:31:14 11 preparation of a presentence report, but let me make
09:31:18 12 certain.

09:31:18 13 Mr. Steward and Mr. Fleming, Mr. Mills, are each
09:31:22 14 of you willing to waive the preparation of a presentence
09:31:25 15 report and have the Court make the finding that there's
09:31:29 16 sufficient information in the record, especially received
09:31:33 17 during the death penalty phase, that would allow the Court
09:31:35 18 to meaningfully sentence in this matter?

09:31:38 19 MR. STEWARD: We waive it, Your Honor.

09:31:39 20 THE COURT: And Mr. Mills?

09:31:41 21 DEFENDANT MILLS: Yes, sir.

09:31:42 22 THE COURT: And Mr. Fleming?

09:31:43 23 MR. FLEMING: Yes, Your Honor. Waived.

09:31:45 24 THE COURT: All right. Let me turn to
09:31:46 25 Mr. Bingham, Mr. White and Mr. Harris with the same

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09:31:50 1 courtesy.

09:31:52 2 Are you specifically waiving the preparation of a
09:31:55 3 presentence report and acceding to the fact that the Court
09:32:02 4 has sufficient information to meaningfully sentence in this
09:32:06 5 matter without the preparation of such a report?

09:32:08 6 Mr. White?

09:32:09 7 MR. WHITE: Yes.

09:32:10 8 THE COURT: Mr. Harris?

09:32:10 9 MR. HARRIS: Yes, Your Honor.

09:32:11 10 THE COURT: Mr. Bingham?

09:32:12 11 DEFENDANT BINGHAM: Yes.

09:32:14 12 THE COURT: Thank you.

09:32:15 13 Mr. Calabria, Mr. Hevle, and Mr. Rosen, gentlemen,
09:32:18 14 once again, you may be entitled to the preparation of a
09:32:22 15 presentence report. I didn't go through a penalty phase
09:32:25 16 hearing, as we did with Mr. Bingham and Mr. Mills.

09:32:27 17 Are each of you willing to waive the preparation
09:32:29 18 of a presentence report and accede to the finding by the
09:32:33 19 Court that there's sufficient information in this record to
09:32:37 20 meaningfully sentence?

09:32:38 21 Mr. Rosen?

09:32:40 22 MR. ROSEN: Your Honor, there was a presentence
09:32:41 23 report prepared for Mr. Hevle.

09:32:43 24 THE COURT: My apologies. You're absolutely
09:32:45 25 right. There is. I've read it twice, so it's not

09:32:49 1 necessary.

09:32:49 2 MR. ROSEN: But we'll waive it if necessary.

09:32:51 3 THE COURT: No. You don't have to waive it.

09:33:06 4 All right. The case took an odd twist last week,
09:33:08 5 which caused a continuance at that time.

09:33:30 6 Counsel, I'm going to proceed to sentence
09:33:32 7 Mr. Mills first, unless there's any objection by any
09:33:35 8 counsel.

09:33:36 9 MR. FLEMING: No objection.

09:33:37 10 THE COURT: Mr. Fleming, is that acceptable?

09:33:40 11 MR. FLEMING: Yes.

09:33:40 12 THE COURT: Mr. Mills, and Mr. Steward?

09:33:43 13 MR. STEWARD: Yes.

09:33:43 14 DEFENDANT MILLS: Yes.

09:33:43 15 THE COURT: Any other defense counsel object to
09:33:45 16 Mr. Mills proceeding first?

09:33:47 17 MR. CALABRIA: No, Your Honor.

09:33:48 18 MR. WHITE: No, Your Honor.

09:33:48 19 MR. HARRIS: No.

09:33:49 20 THE COURT: Government?

09:33:50 21 MR. EMMICK: That's fine, Your Honor.

09:33:51 22 THE COURT: Does anybody else wish to be heard? I
09:33:51 23 want to make certain each of you have had a full and
09:33:55 24 complete hearing, there's no other questions you want to ask
09:33:57 25 or statements you want to make.

09:33:59 1 Mr. Steward? Mr. Fleming?

09:34:00 2 MR. STEWARD: Nothing, Your Honor.

09:34:01 3 THE COURT: Mr. Emmick?

09:34:02 4 MR. EMMICK: No.

09:34:03 5 MR. WOLFE: No, Your Honor.

09:34:39 6 THE COURT: Okay. The government requested that

09:34:41 7 the Court impose very serious restrictive conditions

09:34:48 8 pursuant to 18 USC Section 3582(d) on Mr. Mills and

09:34:59 9 Mr. Bingham. Those conditions -- and is the gentleman from

09:35:16 10 BOP present?

09:35:16 11 Mr. Penn, why don't you come up and have a seat.

09:35:16 12 Those conditions would be communication with

09:35:19 13 attorney only, and no further third-party communication

09:35:25 14 through the attorney with any other person. There would be

09:35:33 15 no phone calls, no visitors, and no mail in and out of the

09:35:43 16 restricted environment.

09:35:49 17 Mr. Penn, on the last occasion, representing BOP,

09:35:52 18 had also asked the Court about plumbing modifications. I

09:35:58 19 would have, if I would have imposed these conditions, also

09:36:02 20 required that the plumbing pipes be modified -- the same as

09:36:05 21 I did for Mr. Mai in MDC in Los Angeles.

09:36:10 22 You're aware of that?

09:36:14 23 MR. PENN: Yes, Your Honor.

09:36:14 24 THE COURT: Okay. There would be two books per

09:36:17 25 month. These would be the most restrictive conditions, at

09:36:24 1 least in the history of modern penal incarceration.

09:36:34 2 The Court notes that of the eleven defendants,
09:36:41 3 with possibly the exception of the terrorist cells that are
09:36:45 4 being built, that this Court, unfortunately, has had to
09:36:51 5 place two of the eleven defendants presently under these
09:36:59 6 severe restrictive conditions: Mr. Mai and Mr. Fernandez.

09:37:08 7 On the last occasion, I'd stated to each of the
09:37:15 8 counsel that the Court simply could not impose these
09:37:18 9 conditions unless it had absolute confidence that the
09:37:23 10 government would provide the Bureau of Prisons with the
09:37:25 11 resources necessary to carry out those conditions.

09:37:35 12 Just in the last week, the Court's become aware of
09:37:39 13 a CNN article, in which I believe Ms. Flynn was interviewed,
09:37:46 14 and pulled from the CNN website, from a Drew Griffin and
09:37:55 15 James Polk's article -- information that initially came to
09:38:01 16 light through the *Daily Journal* in an article dated
09:38:08 17 November 8th, 2006. The *Daily Journal* had printed an
09:38:14 18 article by Catherine Tsai of the Associated Press.

09:38:27 19 I want to read a portion of this article into the
09:38:29 20 record, and it will show why the Court was concerned.

09:38:36 21 "Cory Hodge was a prison guard for less than three
09:38:39 22 years at Supermax -- home of America's most feared and
09:38:43 23 notorious criminals -- before he decided he had had enough.
09:38:47 24 He left to take a job as a train conductor." Quote, "'I
09:38:51 25 felt like staffing levels were coming to a point where it

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09:38:56 1 was getting ridiculously dangerous to be there,' said Hodge,
09:39:02 2 who was stabbed in the head and arms at another prison
09:39:05 3 before going to Supermax. 'I have a wife and children. I
09:39:10 4 want to be around for them,'" end of quote.

09:39:14 5 "Guards at Supermax complain that because of
09:39:18 6 cost-cutting, staffing levels are perilously low, and as a
09:39:24 7 result, prisoners are growing angrier and threats and
09:39:28 8 assaults against the staff are on the rise at the Alcatraz
09:39:32 9 of the Rockies. The \$60 million institution is the nation's
09:39:36 10 most secure prison, reserved for the worst of the worst:
09:39:39 11 Unabomber Ted Kaczynski, al-Qaida conspirator Zacarias
09:39:45 12 Moussaoui, terrorist cleric Omar Abdel-Rahman, would-be shoe
09:39:54 13 bomber Richard Reid, and Oklahoma City bombing conspirator
09:39:59 14 Terry Nichols all are here, locked up in solitary, awaiting
09:40:03 15 a single hour outside each day.

09:40:06 16 "'As of August, however, of the 221 guard
09:40:09 17 positions allotted to Supermax, only 186 were filled,'
09:40:14 18 U.S. Bureau of Prisons spokesman Mike Truman said. 'There
09:40:20 19 were 240 guards when the prison opened in 1994,' said
09:40:27 20 Barbara Batulis, a union vice president. Today there are
09:40:31 21 more than 460 inmates, up from 265 in 1995. Supermax has
09:40:40 22 490 beds.

09:40:47 23 "An arbitrator recently said staffing is so low
09:40:51 24 the job hazards have increased, some cellblocks have been
09:40:56 25 left unstaffed at times, and cells are not being searched

09:41:00 1 regularly. Last year, two inmates were beaten to death by
09:41:05 2 other prisoners -- the first slayings in Supermax's
09:41:09 3 history."

09:41:09 4 Quote, "'To me that's a red flag to say let's
09:41:12 5 figure out what happened and not let it happen again,' said
09:41:15 6 State Representative Buffy McFadyen, whose district includes
09:41:19 7 the prison. 'It could have been a correctional officer that
09:41:21 8 didn't go home those days.'

09:41:23 9 "The union has filed a grievance over staffing
09:41:27 10 levels, and critics want Congress to funnel more money for
09:41:31 11 staffing. Warden R. Wiley declined a request for an
09:41:37 12 interview. Bureau of Prisons Director Harley Lappin said in
09:41:44 13 a note dated August 22nd, that his office would try to
09:41:48 14 reduce the workload on the staff by eliminating and reducing
09:41:51 15 duties where possible.

09:41:52 16 "The Bureau of Prisons, with some 35,000 staff
09:41:58 17 members last year, has been eliminating positions
09:42:01 18 nationwide. Nearly 2,400 jobs have been cut out of the
09:42:06 19 3,118 targeted to be phased out, a 2005 report said.

09:42:12 20 "At Supermax, formally known as the Administrative
09:42:15 21 Maximum Facility, or ADX, the cells are 7-by-12 foot,
09:42:19 22 soundproof spaces, designed so inmates cannot make eye
09:42:23 23 contact with each other. The inmates rely on guards for
09:42:33 24 nearly everything -- toilet paper, toothbrushes and the
09:42:33 25 like. If there are not enough officers around, inmates may

09:42:37 1 have to do without daily recreation or may have to wait
09:42:38 2 longer for their mail. And the inmates take it out on the
09:42:42 3 guards when their routine is disrupted, according to former
09:42:46 4 and current officers.

09:42:49 5 "'There's not enough staff to open the door.
09:43:11 6 It's not because we don't want to give it to them. We
09:43:14 7 can't,' Batulis said.

09:43:15 8 "In an arbitration hearing last spring, prison
09:43:17 9 Captain Havey Church said he found 55 incident reports of
09:43:21 10 threats against staff members from March 1st, 2004, to
09:43:25 11 February 28, 2005. That doubled the following year, around
09:43:31 12 the time the Bureau of Prisons permanently removed some
09:43:36 13 positions, the union said. Assaults against members of the
09:43:39 14 staff went from 30 to 38 during that time period, according
09:43:43 15 to testimony at the hearing.

09:43:45 16 "'We're dealing with the most dangerous people,
09:43:47 17 with little backing us up,' said Mike Schnobrich, an
09:43:51 18 official with the union. 'When they decrease staff levels,
09:43:55 19 we have to ask ourselves: Who's watching our backs?'"

09:44:04 20 The Court has also heard, both during the death
09:44:07 21 penalty phase and the guilt phase of the proceedings, what
09:44:14 22 the government construed to be, and apparently the jury
09:44:18 23 accepted as, threats by Mr. Mills when he was in solitary
09:44:21 24 confinement, towards staff. The Court heard testimony about
09:44:26 25 cyanide being smuggled into the Marion Bureau of Prisons

09:44:32 1 facility to apparently attempt to either poison guards or
09:44:39 2 other inmates. And the Court's heard, over the space of the
09:44:45 3 eight-month trial, numerous charged and uncharged murders
09:44:49 4 involving members of the Aryan Brotherhood who have killed
09:45:02 5 informants, caused a nationwide race war and lockdown of the
09:45:09 6 Federal Bureau of Prisons, and the killing of prison guards
09:45:12 7 by Tommy Silverstein, Clay Fountain, and others.

09:45:18 8 This Court had inquired, Mr. Penn, and it became
09:45:22 9 obvious on the last occasion to me that when the government
09:45:25 10 made the request that the Bureau of Prisons had not been
09:45:27 11 consulted. I had stated at that time, if the government was
09:45:35 12 serious, the Court was serious about these restrictions; but
09:45:39 13 I was deeply concerned that without the resources to carry
09:45:43 14 out these restrictive conditions, that the inmate murders
09:45:49 15 would continue and the BOP staff are at risk of serious
09:45:54 16 bodily injury or death.

09:45:55 17 It makes no sense for the Court to sign an order
09:45:58 18 unless the Court's prepared to judicially use its power to
09:46:01 19 make sure that that order is implemented and that the
09:46:04 20 resources are there so that the Bureau of Prisons has the
09:46:09 21 staffing and the necessary financial resources to truly
09:46:14 22 impose these restrictive conditions. Otherwise it's an
09:46:18 23 order of little value.

09:46:21 24 That's why I wanted the assurance of the Attorney
09:46:25 25 General of the United States. The Court wanted the

09:46:29 1 assurance of the Attorney General because, with that
09:46:32 2 assurance, I then was confident that there were financial
09:46:36 3 resources of the power of the Attorney General's Office, and
09:46:39 4 the willingness to truly impose these orders.

09:46:49 5 I believe last Thursday the Court received a
09:46:50 6 document that the government was withdrawing their request
09:46:54 7 and that the Attorney General intends to instruct the Bureau
09:46:59 8 of Prisons to impose the restrictive conditions.

09:47:11 9 I want to be absolutely clear about this: Through
09:47:15 10 no fault of either of the esteemed counsel and this Court,
09:47:20 11 who have done a remarkable job in this prosecution, this
09:47:23 12 Court has serious questions -- and I'll underline that --
09:47:27 13 about the government's sincerity to provide the resources
09:47:37 14 necessary to carry out these conditions. I can only pray
09:47:42 15 that the Attorney General and the government will provide
09:47:46 16 the Bureau of Prisons with the resources that it needs to
09:47:49 17 carry out the restrictive conditions if they want BOP to
09:47:54 18 impose them, and not put the Bureau of Prisons in the
09:48:00 19 position of being criticized when resources are not being
09:48:04 20 provided.

09:48:05 21 If the Attorney General and the government fail to
09:48:11 22 do so, the Court is convinced that there will be further
09:48:15 23 inmate murders and the Bureau of Prisons' staff will be hurt
09:48:21 24 and, God forbid, even killed. The Court, over eight months,
09:48:28 25 has listened to so many assaults, so many murders, cyanide

09:48:33 1 being smuggled in -- it's incomprehensible, and the duration
09:48:44 2 of time is almost incomprehensible.

09:48:53 3 This Court, I believe the BOP staff, and certainly
09:48:58 4 the citizens of the United States of America expect the
09:49:03 5 Attorney General to do the right thing. If the Attorney
09:49:07 6 General instructs BOP to enforce these restrictive
09:49:11 7 conditions, by God, he'd better provide the BOP with the
09:49:15 8 resources needed to do it. The Attorney General has the
09:49:20 9 power to stop the inmate murders and to protect BOP
09:49:29 10 personnel.

09:49:31 11 This Court was prepared to impose the restrictive
09:49:35 12 conditions on Mr. Mills and ensure -- let me state,
09:49:45 13 "absolutely ensure" that they were carried out properly and
09:50:01 14 safely. It is now the Attorney General's responsibility,
09:50:01 15 the government having withdrawn that request of the Court.

09:50:03 16 **SENTENCING - BARRY BYRON MILLS**

09:50:25 17 THE COURT: Pursuant to the Sentencing Reform Act
09:50:26 18 of 1984, it's the judgment of the Court that the defendant,
09:50:29 19 Barry Byron Mills, is hereby committed on Counts One, Two,
09:50:33 20 Six, Seven, and Nine of the Redacted First Superseding
09:50:41 21 Indictment to the custody of the Bureau of Prisons to be
09:50:44 22 imprisoned for a term of life without the possibility of
09:50:48 23 release.

09:50:49 24 This term consists of life on each of Counts One,
09:50:52 25 Two and Nine, and life without possibility of release on

09:50:57 1 Counts Six and Seven. The term on Counts One and Two shall
09:51:03 2 run concurrently to each other and consecutively to any
09:51:08 3 other term. The term on Count Six shall be consecutive to
09:51:15 4 Counts One, Two, Seven and Nine. The term on Count Seven
09:51:21 5 shall be consecutive to Counts One, Two, Six and Nine. The
09:51:28 6 term on Count Nine shall be consecutive to Counts One, Two,
09:51:34 7 Six and Seven. This sentence shall run consecutive to any
09:51:40 8 undischarged term of imprisonment.

09:51:45 9 There are a number of conditions concerning
09:51:47 10 supervised release, all of which seem nonsensical to the
09:51:51 11 Court since this Court is imposing a "life without
09:51:53 12 possibility of release" term. But the Court will set those
09:51:57 13 forth in the minute orders concerning supervised release,
09:52:00 14 et al., and the conditions, which do not seem appropriate
09:52:06 15 since this will be a "life without possibility of release"
09:52:08 16 term.

09:52:11 17 Pursuant to 18 USC 3553, the Court is imposing a
09:52:16 18 sentence sufficient but not greater than necessary to comply
09:52:19 19 with the purpose as set forth in Paragraph 2 of that
09:52:23 20 subsection. In determining the particular sentence, the
09:52:26 21 Court has considered the nature and circumstances of the
09:52:29 22 offense and the history and characteristics of the defendant
09:52:32 23 spanning well over 30 years of murder and organizational
09:52:39 24 murder.

09:52:41 25 The sentence reflects the seriousness of the

09:52:43 1 offense. It promotes respect for the law. It provides just
09:52:47 2 punishment for the offense. It affords adequate deterrence
09:52:52 3 to criminal conduct. It protects the public from further
09:52:55 4 crimes, and it provides the defendant with any correctional
09:52:59 5 incarceration that is appropriate -- other than my comments
09:53:03 6 concerning the Attorney General and the withdrawing of this
09:53:10 7 order.

09:53:12 8 I'm going to remand you to the care and custody of
09:53:14 9 the Bureau of Prisons. You have ten days from today's date,
09:53:16 10 Mr. Mills, in which to file a notice of appeal concerning
09:53:20 11 either the sentence or any potential issues concerning a new
09:53:24 12 trial. That would be filed, of course, in the Ninth
09:53:28 13 Circuit, and then in the United States Supreme Court,
09:53:30 14 eventually.

09:53:32 15 Now, Mr. Steward, is there anything further?
09:53:33 16 Mr. Fleming?

09:53:36 17 MR. STEWARD: No, Your Honor.

09:53:37 18 THE COURT: All right. We're going to proceed in
09:53:38 19 just a moment with Mr. Bingham, but we're going to have the
09:53:43 20 marshal -- I'm sorry. Kathleen?

09:53:48 21 PRETRIAL SERVICES OFFICER: I'm sorry, Your Honor.
09:53:49 22 You need to impose the special assessment.

09:53:52 23 THE COURT: The special assessment of \$400 will be
09:53:53 24 imposed, which is due immediately. That's required by
09:53:57 25 statute.

09:53:57 1 Now, for the marshals, is it easier to remove
09:54:01 2 Mr. Mills before we proceed to Mr. Bingham?

09:54:06 3 U.S. MARSHAL: No, sir.

09:54:06 4 THE COURT: Okay. Then, we'll proceed to
09:54:07 5 Mr. Bingham.

09:54:08 6

08:45:56 7 **SENTENCING - TYLER DAVIS BINGHAM**

09:54:22 8 THE COURT: Pursuant to the Sentencing Reform Act
09:54:24 9 of 1984 --

09:54:29 10 Mr. White, did you have anything further you
09:54:30 11 wanted to state.

09:54:31 12 MR. WHITE: No, Your Honor.

09:54:33 13 THE COURT: Mr. Harris?

09:54:34 14 MR. HARRIS: No, Your Honor.

09:54:35 15 THE COURT: Pursuant to the Sentencing Reform Act
09:54:37 16 of 1984, it's the judgment of this Court that the defendant,
09:54:39 17 Tyler Davis Bingham, is hereby committed on Counts One and
09:54:43 18 Two, Six, Seven and Nine of the Redacted First Superseding
09:54:47 19 Indictment to the custody of the Bureau of Prisons to be
09:54:49 20 imprisoned for a term of life without the possibility of
09:54:52 21 release.

09:54:53 22 This term consists of life on each of Counts One,
09:54:56 23 Two and Nine, and life without the possibly of release on
09:54:59 24 Counts Six and Seven. The term on Counts One, Two and Six
09:55:03 25 shall run concurrently to each other and consecutively to

09:55:07 1 any other term. The term on Count Seven shall be
09:55:10 2 consecutive to Counts One, Two, Six and Nine. The term on
09:55:14 3 Count Nine shall be consecutive to Counts One, Two, Six and
09:55:18 4 Seven. This sentence shall run consecutive to any
09:55:22 5 undischarged term of imprisonment.

09:55:24 6 If released from imprisonment, once again, as in
09:55:28 7 Mr. Mills' case, you would be placed on supervised release
09:55:30 8 for a term of five years, with the terms and conditions that
09:55:33 9 the Court will set forth on the minute order -- which seems
09:55:36 10 nonsensical to the Court, because this is a "life without
09:55:39 11 possibility of release" sentence.

09:55:41 12 You're also ordered to pay a special assessment of
09:55:43 13 \$400, which is due immediately.

09:55:46 14 Once again, pursuant to 18 USC Section 3553(a),
09:55:50 15 the Court shall impose a sentence that is sufficient but not
09:55:53 16 greater than necessary to comply with the purposes set forth
09:55:57 17 in Paragraph 2 of that subsection. In determining this
09:56:00 18 particular sentence, which covers not the same period of
09:56:05 19 time as Mr. Mills and not the same quantum of murders, but
09:56:09 20 substantial murders over a substantial period of time, the
09:56:12 21 Court has considered the nature and circumstances of the
09:56:22 22 offense and the history and characteristics of Mr. Bingham.

09:56:22 23 The sentence reflects the seriousness of the
09:56:22 24 offense and promotes respect for the law, provides just
09:56:24 25 punishment for the offense. It affords adequate deterrence.

09:56:28 1 It protects the public from further crimes of the defendant.

09:56:32 2 It takes into account the kinds of sentences available.

09:56:36 3 Once again, Mr. Bingham you have the right to

09:56:38 4 appeal within ten days. That's a personal right and

09:56:40 5 responsibility, but Mr. White and Mr. Harris are able

09:56:43 6 counsel. They'll automatically file that appeal on your

09:56:45 7 behalf, which will either go to the Ninth Circuit, and

09:56:48 8 possibly on to the United States Supreme Court.

09:56:51 9 Counsel, Mr. White, is there anything further?

09:56:54 10 MR. WHITE: No, Your Honor.

09:56:54 11 THE COURT: Mr. Harris?

09:56:56 12 MR. HARRIS: No, Your Honor.

09:56:57 13 THE COURT: Now, I will ask the marshals, though,

09:56:58 14 to escort Mr. Mills and Mr. Bingham out. I'm going to clear

09:57:02 15 the courtroom before I proceed with Mr. Hevle.

09:57:04 16 We're in recess.

09:57:05 17 *(Defendants Mills and Bingham exit the*

09:57:05 18 *courtroom.)*

09:57:05 19 *(Pause in the proceedings at 9:57 a.m.)*

09:57:06 20 *(Proceedings resumed at 10:14 a.m.)*

09:57:06 21 **SENTENCING - EDGAR WESLEY HEVLE**

10:14:22 22 THE COURT: We're back on the record in

10:14:23 23 Mr. Hevle's matter. All counsel are present. Mr. Hevle and

10:14:26 24 his counsel are present.

10:14:27 25 Mr. Calabria, do you have anything further?

10:14:29 1 MR. CALABRIA: No, Your Honor.

10:14:29 2 THE COURT: Mr. Rosen, do you?

10:14:31 3 MR. ROSEN: Your Honor, Mr. Hevle has asked me to
10:14:32 4 state on the oral record, as I have filed in my last writing
10:14:37 5 about conditions, a reminder that the government had
10:14:40 6 presented evidence that his phone calls, mail and visits had
10:14:44 7 been monitored for three years, and yet they offered no
10:14:47 8 evidence that they believe is relevant to the guilt phase
10:14:51 9 from that monitoring. With that, we have nothing further.

10:14:54 10 THE COURT: Okay. Kathleen, could I see you for
10:15:15 11 just one moment, please.

10:15:32 12 *(Conference between the Court and Pretrial*
10:15:40 13 *Services Officer off the record.)*

10:16:36 14 THE COURT: Now, Counsel, the Court has not
10:16:41 15 entered into a discussion concerning the offense level
10:16:55 16 computation on Mr. Mills and Mr. Bingham. Those were
10:16:59 17 statutory impositions of sentence, but the Court did
10:17:04 18 consider the sentencing guidelines, as well. And the Court
10:17:15 19 adopts both the charges and convictions section, as well as
10:17:18 20 the offense conduct section, of the Mills, Bingham and Hevle
10:17:25 21 reports as its own.

10:17:29 22 Mr. Hevle, the Court's considered the factors
10:17:31 23 enumerated in 18 USC 3553(a) and the guideline range of
10:17:39 24 life, based on an offense level of 46 and a criminal history
10:17:42 25 Category of VI. The Court adopts the calculations of the

10:17:46 1 probation officer as its own on page 23, line 176, through
10:17:53 2 page 25 -- strike that -- page 26, through Paragraph 203,
10:18:01 3 and also the Criminal History Category beginning on page 26,
10:18:07 4 205 through Paragraph 217 -- strike that -- through
10:18:14 5 Paragraph 222, on page 29, as its own calculation.

10:18:23 6 The Court imposes the following sentence after
10:18:28 7 considering 18 USC 3553(a):

10:18:35 8 It is ordered that you shall pay to the
10:18:37 9 United States a special assessment of \$400 which is due
10:18:41 10 immediately.

10:18:41 11 Pursuant to the Sentencing Reform Act of 1984,
10:18:43 12 it's the judgment of the Court that the defendant, Edgar
10:18:47 13 Wesley Hevle, is hereby committed on Counts Two, Six, Seven
10:18:50 14 and Nine of the Redacted First Superseding Indictment to the
10:18:54 15 custody of the Bureau of Prisons to be imprisoned for a term
10:18:57 16 of life.

10:18:58 17 This term of life, on each of Counts Two, Six,
10:19:01 18 Seven and Nine of the Redacted First Superseding Indictment
10:19:05 19 is to be served as follows:

10:19:07 20 The sentence on Counts Two and Six to be
10:19:09 21 concurrent to each other. The sentence on Count Seven to be
10:19:14 22 consecutive to the sentence on Counts Two and Six. The
10:19:17 23 sentence on Count Nine to be consecutive to the sentence on
10:19:21 24 Counts Two, Six and Seven. All sentences to be consecutive
10:19:24 25 to Mr. Hevle's undischarged term of imprisonment.

10:19:29 1 Mr. Hevle, you have the right to appeal from the
10:19:31 2 Court's sentence today and, of course, the proceedings. But
10:19:35 3 that's a personal right and responsibility. You have
10:19:37 4 ten days in which to make that appeal. Your counsel,
10:19:40 5 Mr. Calabria and Mr. Rosen, will automatically file that
10:19:44 6 appeal on your behalf.

10:19:46 7 Now, is there anything further on behalf of the
10:19:47 8 government?

10:19:48 9 MR. EMMICK: Nothing, Your Honor.

10:19:49 10 THE COURT: Mr. Calabria? Mr. Rosen?

10:19:53 11 MR. CALABRIA: No, Your Honor.

10:19:54 12 MR. ROSEN: No, Your Honor.

10:19:55 13 THE COURT: All right, gentlemen.

10:19:56 14 Thank you very much.

10:20:00 15 *(At 10:20 a.m., proceedings were adjourned.)*

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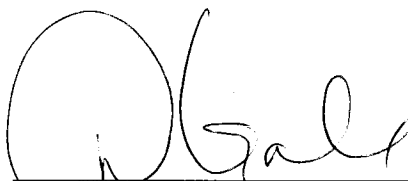
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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: November 22, 2006



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